

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES of AMERICA,)	
STATE OF ILLINOIS,)	
STATE OF LOUISIANA,)	
)	
Plaintiffs,)	
)	
v.)	No.
)	
CLEAN HARBORS SERVICES, INC.,)	Judge
SPRING GROVE RESOURCE RECOVERY, INC.,)	
CLEAN HARBORS OF BRAINTREE, INC.,)	
CLEAN HARBORS OF CONNECTICUT, INC.,)	
CLEAN HARBORS BATON ROUGE, LLC,)	
CLEAN HARBORS PLAQUEMINE, LLC,)	
CLEAN HARBORS LA PORTE, L.P.,)	
CLEAN HARBORS DEER PARK, L.P.,)	
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.,)	
CLEAN HARBORS ARAGONITE, LLC,)	
)	
Defendants.)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”); the State of Illinois (“Illinois”), by the authority of the Attorney General of Illinois; and the State of Louisiana (“Louisiana”), by and through its Attorney General, on behalf of the people of the State of Louisiana, and the Louisiana Department of Environmental Quality (“LDEQ”), by and through its Secretary, allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Defendants Clean Harbors Services, Inc.; Spring Grove Resource Recovery, Inc.; Clean Harbors of Braintree, Inc.; Clean Harbors of Connecticut, Inc.; Clean Harbors Baton Rouge, LLC; Clean Harbors Plaquemine, LLC; Clean Harbors La Porte, L.P.; Clean Harbors Deer Park, L.P.; Clean Harbors Environmental Services, Inc.; and Clean Harbors Aragonite, LLC (collectively “Clean Harbors” or “Defendants”), pursuant to Sections 113(b) and 304(a) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7413(b), 7604(a); the Illinois Environmental Protection Act, Title II: Air Pollution, 415 ILCS 5/8 et seq.; and the Louisiana Environmental Quality Act, LSA-R.S. 30:2001 et seq., for injunctive relief and civil penalties resulting from alleged violations of the National Emission Standard for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF, occurring at facilities that Defendants own and/or operate in Chicago, Illinois; Cincinnati, Ohio; Braintree, Massachusetts; Bristol, Connecticut; Baton Rouge, Louisiana; Plaquemine, Louisiana; La Porte, Texas; Deer Park, Texas; Kimball, Nebraska; and Aragonite, Utah (the “Covered Facilities”).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under Sections 113(b) and 304(a) of the CAA, 42 U.S.C. § 7413(b) and 7604(a), and under 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

3. Venue is proper in this District under Section 113(b) and 304(c) of the CAA, 42 U.S.C. § 7413(b) and 7604(c), and under 28 U.S.C. §§ 1391(b), (c), and 1395(a), because Clean Harbors is doing business in the Northern District of Illinois and because some of the violations

alleged occurred at Clean Harbors' Chicago Facility, which is located within the Northern District of Illinois.

NOTICE TO STATES

4. The United States has given notice of the commencement of this action to the appropriate state air pollution control agencies for Illinois, Louisiana, Ohio, Massachusetts, Connecticut, Texas, Nebraska, and Utah, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 1713(b).

DEFENDANTS

5. Defendants Clean Harbors Services, Inc.; Spring Grove Resource Recovery, Inc.; Clean Harbors of Braintree, Inc.; Clean Harbors of Connecticut, Inc.; Clean Harbors Baton Rouge, LLC; Clean Harbors Plaquemine, LLC; Clean Harbors La Porte, L.P.; Clean Harbors Deer Park, L.P.; Clean Harbors Environmental Services, Inc.; and Clean Harbors Aragonite, LLC, are corporations organized under the laws of various states and are authorized to do business in the following states: Illinois, Louisiana, Ohio, Massachusetts, Connecticut, Texas, Nebraska, and Utah.

6. Clean Harbors Services, Inc. owns and/or operates a hazardous waste treatment, storage and disposal facility ("TSDf") located at 11800 South Stony Island Avenue, Chicago, Illinois 60617 ("Chicago Facility").

7. Spring Grove Resource Recovery, Inc. owns and operates a TSDf located at 4879 Spring Grove Avenue, Cincinnati, OH 45232.

8. Clean Harbors of Braintree, Inc. owns and operates a TSDf located at 1 Hill Ave., Braintree, MA 02184.

9. Clean Harbors of Connecticut, Inc. owns and operates a TSDF at 761 Middle St., Bristol, CT 06010.
10. Clean Harbors Baton Rouge, LLC owns and operates a TSDF at 13351 Scenic Highway, Baton Rouge, LA 70807.
11. Clean Harbors Plaquemine, LLC owns and operates a TSDF at 32655 Gracie Lane, Plaquemine, LA 70764.
12. Clean Harbors La Porte, L.P., owns and operates a TSDF at 500 Battleground Road, La Porte, TX 77571.
13. Clean Harbors Deer Park, L.P., owns and operates a TSDF at 2027 Battleground Road, Deer Park, TX 77536.
14. Clean Harbors Environmental Services, Inc., owns and operates a TSDF at 2247 South Highway 71, Kimball, NE 69145.
15. Clean Harbors Aragonite, LLC, owns and operates a TSDF at 11600 North Aptus Road, Aragonite, UT 84029.
16. Defendants each are “persons” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and applicable federal and state regulations promulgated pursuant to the CAA and corollary state statutes.

**STATUTORY AND REGULATORY
BACKGROUND AND GENERAL ALLEGATIONS**

17. Section 112 of the CAA, 42 U.S.C. § 7412, required U.S. EPA to promulgate emission standards for certain categories of sources of hazardous air pollutants (“National Emission Standards for Hazardous Air Pollutants” or “NESHAPs”).

18. Benzene is a hazardous air pollutant within the meaning of Section 112 of the CAA, 42 U.S.C. § 7412. Benzene is a cyclic hydrocarbon compound that is a volatile, flammable liquid at room temperature. Based on studies that link occupational exposure to benzene with leukemia, U.S. EPA has concluded that benzene is a human carcinogen.

19. In accordance with the provisions of Section 112(d) of the CAA, 42 U.S.C. § 7412(d), U.S. EPA promulgated the National Emission Standard for Benzene Waste Operations (“Benzene Waste NESHAP”), set forth at 40 C.F.R. Part 61, Subpart FF, §§ 61.340-61.358.

20. Pursuant to 40 C.F.R. § 61.340, the provisions of the Benzene Waste NESHAP apply to owners and operators of petroleum refineries, chemical manufacturing plants, coke byproduct recovery plants, and each hazardous waste treatment, storage, and disposal facility (“TSDF”) that treats, stores, or disposes of hazardous waste generated by any of the aforementioned facilities.

21. Pursuant to 40 C.F.R. § 61.340(b), in the case of TSDFs, the Benzene Waste NESHAP is applicable to benzene-containing hazardous wastes from petroleum refineries, chemical manufacturing plants, and coke byproduct recovery plants.

22. Each of the facilities referred to in Paragraphs 5 through 15 of this Complaint (the “Covered Facilities”) is a TSDF that treats, stores, or disposes of hazardous wastes generated by various sources, including chemical manufacturing plants, coke byproduct recovery plants, and/or petroleum refineries.

23. Each of the Covered Facilities is subject to the Benzene Waste NESHAP.

24. 40 C.F.R. § 61.357(a) of the Benzene Waste NESHAP requires each owner or operator of a facility subject to the Benzene Waste NESHAP to submit to U.S. EPA an initial report containing, inter alia, the following information: (1) the Total Annual Benzene (“TAB”) quantity

from facility waste determined in accordance with 40 C.F.R. § 61.355(a); and (2) a table identifying each waste stream and whether the waste stream will be controlled for benzene emissions in accordance with Subpart FF of 40 C.F.R. Part 61.

25. Facilities subject to the Benzene Waste NESHAP that were in existence on the effective date of the Benzene Waste NESHAP (April 7, 1993) were required to submit the initial report required under 40 C.F.R. § 61.357(a) by no later than April 7, 1993.

26. The Covered Facilities were all in existence on April 7, 1993.

27. 40 C.F.R. §§ 61.357(b), (c), and (d) require the owner or operator of each facility subject to the Benzene Waste NESHAP to submit reports that update the information set forth in the initial report under 40 C.F.R. § 61.357(a)(1) - (3). Facilities with TABs of 1 Mg/yr or more must submit these reports annually and are required to include updated information on the facility's TAB, determined in accordance with 40 C.F.R. § 61.355(a), and an updated table identifying each waste stream and indicating whether the waste stream will be controlled in accordance with Subpart FF of 40 C.F.R. Part 61.

28. Except for the Bristol, Baton Rouge, and LaPorte Facilities, the remainder of the Covered Facilities have reported TABs of 1 Mg/yr or greater during some or all of the reporting years between 1999 and 2004.

29. Under 40 C.F.R. § 357(a)(1) and (c), the owner or operator of each facility subject to the Benzene Waste NESHAP must determine its TAB quantity in accordance with the procedures set forth in 40 C.F.R. § 61.355. The TAB quantity is the sum of the annual benzene quantity for each waste stream at the facility that has a flow-weighted annual average water content greater than

10 percent or that is mixed with water, or other wastes, at any time and the mixture has an annual average water content greater than 10 percent. 40 C.F.R. § 61.342(a).

30. The owner or operator of each facility subject to the Benzene Waste NESHAP must determine its TAB quantity by multiplying the annual waste quantity of each facility waste stream by the flow-weighted annual average benzene concentration of each such waste stream. 40 C.F.R. § 61.355(a)(1)(iii).

31. TSDFs subject to the Benzene Waste NESHAP must determine the annual waste quantity of each waste stream and the flow-weighted annual average benzene concentration of each such waste stream at the point where the waste enters the TSDF. 40 C.F.R. §§ 61.355(a)(1)(i), 61.355(a)(1)(ii), 61.355(b)(3), and 61.355(c)(1)(i)(C).

32. The owner or operator of each facility subject to the Benzene Waste NESHAP (including TSDFs) must determine the flow-weighted annual average benzene concentration of each waste stream either through knowledge of the waste, 40 C.F.R. § 61.355(c)(2), or through measurements of the benzene concentration in the waste stream taken in accordance with specified procedures. 40 C.F.R. § 61.355(c)(3). Examples of information that may constitute “knowledge of the waste” pursuant to 40 C.F.R. § 61.355(c)(2) include material balances, record of chemicals purchases, or previous test results (if the results are still relevant to the current waste stream conditions).

33. Pursuant to 40 C.F.R. § 61.342(f), TSDFs that accept waste from generators that themselves have TABs equal to or greater than 10 Mg/yr must manage and treat all such wastes in accordance with the requirements of 40 C.F.R. § 61.342(c)(1)(i). See also 58 Fed. Reg. 3073, 3077 (January 7, 1993). If the TSDF transfers such waste to another facility, instead of treating it, then

the TSDf must comply with 40 C.F.R. § 61.342(f)(1). 40 C.F.R. § 61.342(f)(1), in turn, requires the TSDf to comply with the standards specified in 40 C.F.R. §§ 61.343 through 61.347. Of relevance to this complaint, 40 C.F.R. § 61.345(a) requires the installation, operation, and maintenance of a cover system on each container that is used to handle, transfer, or store benzene-containing wastes, and requires that transfers between containers be made in accordance with the procedures set forth therein.

34. Pursuant to 40 C.F.R. § 61.342(b), TSDfs that have a TAB quantity equal to or greater than 10 Mg/yr must install controls consistent with the requirements of the Benzene Waste NESHAP at 40 C.F.R. §§ 61.342(c) through (h), and 40 C.F.R. §§ 61.343 through 61.348.

35. Except where U.S. EPA or the President has granted a waiver or exemption under the CAA, 40 C.F.R. § 61.05(c) prohibits an owner or operator of a facility from operating an existing source subject to a NESHAP standard in violation of the standard.

36. None of the Covered Facilities has been granted a waiver or exemption from the Benzene Waste NESHAP.

COUNT I

Failure to Comply with 40 C.F.R. §§ 61.357(b),(c), and (d) and 61.355(a) – Improper TAB Determinations and Reports

37. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs 1 through 36 above, as though fully set forth in this Count.

38. On information and belief, since at least April 1, 1998, Defendants have submitted annual TAB reports for the Covered Facilities that failed to comply with the requirements of 40 C.F.R. § 61.357(b), (c) and/or (d).

39. On information and belief, as to each of the Covered Facilities, Defendants failed to submit annual reports that updated each Facility's TAB quantity in accordance with the requirements of 40 C.F.R. § 61.355(a), in violation of 40 C.F.R. §§ 61.357(b), (c) and (d). Specifically, Defendants failed to determine the annual waste quantity and the flow-weighted annual average benzene concentration for each waste stream received from off-site at the point where such wastes entered the Facilities, as required by 40 C.F.R. §§ 61.355(a)(1)(i), 61.355(a)(1)(ii), 61.355(b)(3), and 61.355(c)(1)(i)(C). As a result, the annual reports submitted by Defendants failed to accurately report the TABs for the Covered Facilities.

40. On information and belief, since at least April 1, 1998, the annual reports that Defendants submitted for the Covered Facilities did not identify the total annual benzene quantity from facility waste determined in accordance with 40 C.F.R. § 61.355(a) because Defendants failed to determine the flow-weighted annual average benzene concentration of each waste stream either through knowledge of the waste or through measurements of the benzene concentration in the waste stream taken in accordance with specified procedures, as required by 40 C.F.R. §§ 61.355(a)(1)(ii), 61.355(c)(2), and 61.355(c)(3). Instead, Defendants used the "mid-point" in a range of benzene concentrations when a generator identified the benzene concentration in a particular waste shipment in terms of a range. As a result, the annual reports submitted by Defendants failed to accurately report the TAB for the Covered Facilities during this time frame.

41. The acts or omissions referred to in Paragraphs 37-40, above, constitute violations of 40 C.F.R. §§ 61.357(b), (c), (d) and 61.355(a) of the Benzene Waste NESHAP and of the CAA.

42. The violations of Defendants, as set forth above, subject them to injunctive relief and civil penalties of (i) up to \$27,500 per day for each violation of the Benzene Waste NESHAP

occurring between January 30, 1997, and March 15, 2004, and (ii) up to \$32,500 for each violation occurring on and after March 15, 2004.

COUNT II

Violation of 40 C.F.R. §§ 61.357(b), (c), and (d) – Failure to Identify and Provide Information about Individual Waste Streams

43. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs 1 through 42 above, as though fully set forth in this Count.

44. For the period of time relevant to this Complaint, on information and belief, the reports that Defendants submitted for the Covered Facilities under 40 C.F.R. §§ 61.357(b), (c), and (d) failed to include the information required pursuant to 40 C.F.R. § 61.357(a)(2)-(3), including, but not limited to, failing to provide a table listing each waste stream, failing to state whether or not Defendants controlled the waste streams for benzene emissions, and, for waste streams identified as not being controlled, failing to include the required information.

45. The acts or omissions referred to in the preceding paragraph constitute violations of 40 C.F.R. § 61.357(b), (c), and (d) of the Benzene Waste NESHAP and of the CAA.

46. The violations of Defendants, as set forth above, subject them to injunctive relief and civil penalties of (i) up to \$27,500 per day for each violation of the Benzene Waste NESHAP occurring between January 30, 1997, and March 15, 2004, and (ii) up to \$32,500 for each violation occurring on and after March 15, 2004.

COUNT III

**Violation of 40 C.F.R. §§ 61.342(f), 61.342(c)(1)(i),
and 61.345(a) – Treatment and Control Requirements
(Chicago Facility Only)**

47. Plaintiffs the United States and Illinois reallege and incorporate by reference the allegations set forth in Paragraphs 1 through 46 above, as though fully set forth in this Count.

48. Benzene wastes shipped to a TSDF from a generator whose TAB is equal to or greater than 10 Mg/yr must be treated or controlled at the TSDF, even when the TSDF's TAB is below 10 Mg/yr. 40 C.F.R. § 61.342(f), 40 C.F.R. § 61.342(c)(1)(i), 58 Fed. Reg. 3073, 3077 (January 7, 1993).

49. On or about February 12, 1999, the Chicago Facility, which is owned and operated by Defendant Clean Harbors Services, Inc., received drums containing certain benzene-containing dry filter wastes from Amoco Chemical Company's Alvin, Texas facility ("Amoco's Facility"). Amoco's Facility had a TAB equal to or greater than 10 Mg/yr. Rather than treating this waste at the Chicago Facility, Clean Harbors Services, Inc. shipped some or all of this waste to an incineration facility located in Kimball, Nebraska.

50. At the Chicago Facility, prior to the shipment, Clean Harbors Services, Inc. transferred the benzene-containing wastes referred to in the preceding paragraph from at least four of the original drums to another container without proper controls during the transfer and without proper controls on the receiving container, in violation of 40 C.F.R. §§ 61.342(f), 61.342(c)(1)(i), and 61.345(a)(1) of the Benzene Waste NESHAP and the CAA.

51. The violation of Clean Harbors Services, Inc., as set forth above, subjects it to injunctive relief and civil penalties of up to \$27,500 per day for each violation of the Benzene Waste NESHAP.

COUNT IV

Violation of 40 C.F.R. §§ 61.342(b) – Failure to Manage and Treat Wastes (Chicago Facility Only)

52. Plaintiffs the United States and Illinois reallege and incorporate by reference the allegations set forth in Paragraphs 1 through 51 above, as though fully set forth in this Count.

53. The regulation at 40 C.F.R. § 61.342(b) requires each owner or operator of a facility subject to 40 C.F.R. Part 61, Subpart FF, and at which the total annual benzene quantity from facility waste is equal to or greater than ten megagrams per year (10 Mg/yr), to manage and treat the facility waste pursuant to the requirements of 40 C.F.R. §§ 61.342(c)-(h) and 61.343-61.348.

54. For calendar years 1999, 2000, and 2001, the total annual benzene quantity from the waste at the Chicago Facility was equal to or greater than ten megagrams per year (10 Mg/yr).

55. During these calendar years, the Chicago Facility did not manage and treat its benzene-containing wastes in accordance with the requirements of 40 C.F.R. §§ 61.342(c)-(h) and 61.343-61.348.

56. These acts or omissions constitute violations of 40 C.F.R. § 61.342(b) of the Benzene Waste Operations NESHAP and of the Clean Air Act.

57. The violations of Clean Harbors Services, Inc., as set forth above, subjects it to injunctive relief and civil penalties of up to \$27,500 per day for each violation of the Benzene Waste NESHAP.

WHEREFORE, the United States, Illinois, and Louisiana respectfully request that this Court:

- (a) Require Defendants to comply with the Benzene Waste NESHAP, including 40 C.F.R. §§ 61.357(b), (c), (d) and 61.355(a), (c);
- (b) Award Plaintiffs civil penalties of (i) up to \$27,500 per day for each violation of the Benzene Waste NESHAP occurring between January 30, 1997, and March 15, 2004, and (ii) up to \$32,500 for each violation occurring on and after March 15, 2004;
- (c) Enter judgment in favor of Plaintiffs and against Defendants; and
- (d) Award Plaintiffs such further relief as this Court deems proper.

Respectfully submitted,

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